assistance of the findings of either of the Courts in the Dominion. For these reasons the appeal must be allowed, the judgments of the Exchequer Court affirming the decree of the local Judge in admiralty should be set aside and the action should be dismissed. The plaintiff must pay the costs of the appeal to the Exchequer Court and to His Majesty in Council and the costs of the action, save in so far as they have been increased by the costs of the issue raised by apra. 21 of the defence, which costs must be paid by the defendants to the plaintiffs with a set-off of costs. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.

Solicitors: *Richards, Butler & Co.; Hill, Dickinson & Co.*

[*There is no page 32*]

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STRAITS SETTLEMENTS REPORTS

PUBLISHED BY AUTHORITY

BASAPAH v. NARAYANAN CHETTIAR & ORS.

[O.C.J. (Terrell J.) October 7, 1935]

[Singapore Originating Summons No. 48 of 1934]

Action by surety to administration bond against the administrator.

An administrator of an intestate's estate who has cleared the estate is in the same position towards the next-of-kin as an executor is towards a residuary legatee. His liability as administrator only ceases when he has transferred the property to someone who can give him a proper discharge. Sureties to an administration bond are liable to see to the proper distribution of the assets of the estate amongst the persons who are entitled thereto or can give a valid receipt therefor. If the administrator does not pay over the assets of the estate to a person or persons able to give him a proper discharge the sureties to the administration bond will *prima facie* be liable in an action brought by an infant beneficiary when he comes of age.

When the grant of administration is made to a person as attorney of, e.g. a widow, the administrator cannot obtain a proper discharge for the assets of the testator's estate by merely handing over the assets to his principal; such principal not being herself an administrator but merely a person who may be entitled to apply for letters of administration. This is so even if the widow is a Hindu widow and under the laws of the country of domicile of the deceased no representation is ever taken out in respect of the property of a Hindu joint family. The Court has however a discretion to allow the administrator to hand over all the assets to such a person and if the Court makes an order allowing him to do so the administrator is protected; but the administrator is not protected if he makes such a payment to such a person without authorisation from the Court.

ORIGINATING SUMMONS.

Walters and *Hoalim* for the plaintiff.

Roland Braddell and *Mundell* for the 1st defendant.

Mundell for the 2nd defendant.

Koek for the 3rd defendant.

Cur. Adv. Vult.

The facts and arguments sufficiently appear from the judgment.

Terrell, J.: M. A. R. M. Saminathan Chettiar died in India on the 15th July, 1925 possessed of considerable property in Singapore. He left two widows, Seethai Achi, the second defendant, and Kaveri Achi, and an infant son by Seethai Achi, Soman, who is the third defendant, and appears by his guardian *ad litem*. Letters of administration to the estate of the deceased were first granted to an attorney of the widow, Kaveri Achi in Probate 170 of 1927. Thereupon the first defendant as the attorney of Seethai Achi, the other widow, took proceedings for revocation of the grant made to Kaveri Achi's attorney. The disputes were referred to arbitration and the arbitrators awarded Kaveri Achi the sum of $540,000. This sum having been paid on the 17th October, 1927, the grant to Kaveri Achi's attorney was revoked, and in due course the first defendant petitioned for letters of administration as Seethai's attorney. Letters of administration were granted to him on the 27th January, 1928 and such letters of administration were issued on the 8th February, 1928. The sureties to the administration bond were the 4th defendant and the plaintiff and the amount of the bond was $300,000.

The estate of the deceased consisted of a share in the firm of A.R.A.M. There was litigation between Mootoo Carupen, one of the partners and Seethai Achi (Suit No. 868 of 1928), but in the end terms of compromise were arranged and approved by the Court by an order dated the 3rd October, 1928. This order particularly recites that the compromise was for the benefit of the infant son of the deceased, the third defendant (therein described as M.A.R.M. Saminathan Chettiar). The first defendant represented Seethai Achi in these proceedings and as a result of the compromise the first defendant received as the deceased's share in the firm of A.R.A.M. the sum of $908,554.34. The division of the partnership assets was duly approved by order of Court dated 11th January, 1929 made in Suit No. 868 of 1928. Shortly afterwards those assets were employed in a new firm carried on, under the vallasam A.R.S.A.R. Seethai Achi, by the first defendant as the attorney of Seethai Achi under a power of attorney dated the 4th February, 1929.

The first defendant accounted to Seethai Achi and obtained a full discharge from her dated the 1st March, 1931.

On the 21st April, 1934 the plaintiff as one of the sureties to the administration bond commenced these proceedings asking for administration of the estate of the deceased by the Court. It appears from the affidavit in support of the application that his co-surety, Ong Kah Lock would be unlikely to meet his obligations under the bond and that any claim upon the bond would therefore fall solely on the plaintiff. He alleges that the release by Seethai Achi was not valid and that the estate was not administered according to law.

Originally only the first defendant was made a respondent to the originating summons and numerous affidavits were filed on both sides in which various allegations were made by the plaintiff, one relating to the payment to Kaveri Achi before the date of the grant of letters of administration to the first defendant and others relating to his management of the firm of A.R.S.A.R. after he had handed over the assets of the deceased's estate to Seethai Achi. I need not refer to

[34] any of these allegations in detail as on [34] the 27th July, 1934 an order was made directing issues to be prepared and such issues are the only matters for consideration of the Court.

In the meantime on the 6th February, 1935 an order of Court was made adding the 2nd and 3rd defendants as parties. It would appear that at some later date Ong Kah Lock, the other surety, was also added as a defendant but he has never taken any part in the proceedings and on the 2nd July, 1935 an order was made dispensing with the service of further proceedings upon him. Appearances were entered for the second defendant on the 11th May, 1935 and for the third defendant by his guardian *ad litem* on the 4th June, 1935. The issues in pursuance of the order of the 27th July, 1934 were finally agreed by the solicitors for the plaintiff, for 1st and 2nd defendants and for the 3rd defendant and are dated the 27th July, 1935. They read as follows:

(1) Whether the intestate Saminathan Chettiar deceased was, at the date of his death, a member of an undivided joint Hindu family.

(2) Whether by the law of the domicile of the intestate Saminathan Chettiar deceased his widow, Seethai Achi was, at all material times, in the position of a personal representative of the said Saminathan Chettiar deceased.

(3) Whether on or about the 1st day of March, 1931 the said Seethai Achi was competent to receive and give a receipt for the assets of the intestate Saminathan Chettiar deceased locally situate within the Straits Settlements.

(4) Whether the receipt or release dated the 1st day of March, 1931 given by the said Seethai Achi to Narayanan Chettiar the first defendant in these proceedings was sufficient completely to discharge the said Narayanan Chettiar from his duty and liability as administrator in the Straits Settlements of the estate of the intestate Saminathan Chettiar deceased or whether such receipt or release operated as a discharge only to the extent of the assets actually handed over by the said Narayanan Chettiar to the said Seethai Achi or at all.

It will be seen that no allegations of breach of trust or maladministration are made on behalf of the plaintiff or of the 3rd defendant apart from the fact that the first defendant transferred the whole of the assets of the estate to the 2nd defendant, and really the only issue before the Court is whether in the circumstances the first defendant was justified in so doing. If he was, the estate has been fully administered and no action can be brought against the 1st defendant as administrator, and it is only for such claims that the sureties can be liable.

Now it was admitted that the deceased left no debts and that the estate duty has been paid. I was informed that recently a claim for further estate duty had been made, but this is contested and is anyway irrelevant to these proceedings although if it were in fact payable the plaintiff might be involved in a liability and would be entitled to take other proceedings to protect himself.

Now, the first question that arises is the extent of the sureties' liability under the bond. Mr. Braddell argued that when once the debts had been discharged and the estate duty paid the estate was 'cleared', and that thereupon the administrator became a trustee of the residue, that the sureties' liability was at an end, that the payment to Seethai Achi was no part of the administration but of the distribution, and that the surety's bond was not for the benefit of the beneficiaries. He cited *In re Ponder,* [1921] 2 Ch. p. 59, and *Bayne* v. *Blake,* [1908] A.C. p. 371, and certain other cases, none of which, in my opinion, establish the proposition submitted. *In re Ponder* merely shows that an administrator who has cleared the estate is in the same position towards the next-of-kin as an executor is towards the residuary legatee. He becomes a trustee and can appoint another trustee to act with him, or presumably can appoint other trustees and retire from the trust. The case does not say that because for certain purposes he is a trustee his liabilities as administrator have ceased. His liability as administrator only ceases when he has transferred the property to someone who can give him a discharge. He can obtain a discharge by payment to the beneficiaries of full age or into Court or to properly appointed trustees. If he is one of such trustees, no doubt his future liability would be as trustee and not as administrator, but a sole administrator cannot obtain a discharge by notionally turning himself into a sole trustee and doing nothing more. In the case of *Bayne* v. *Blake* the administratrix had cleared the estate and the residue belonged to her and her two sisters in equal undivided shares. The two sisters consented that it should remain in the hands of the original administratrix, who thereupon became either a trustee or an agent for them. As soon as the beneficiaries assented to this state of affairs it was clear that the administration was at an end and the sureties' liability had ceased.

To my mind the proposition that the sureties are liable for the distribution of the estate amongst the persons who are entitled thereto or can give a valid receipt therefor, is too clear for argument, and this may be the reason why there are so few authorities on the subject.

I will refer first to the petitioner's oath which is annexed to the petition for letters of administration. It reads as follows:—

"I, Muna Sona Narayanan Chettiar, swear that I will [35] faithfully administer the [35] estate and effects of Muthu Ahna Roona Moona Saminathan Chettiar deceased by paying his debts so far as such estate and effects will extend and the law requires and *distributing the residue of such estate and effects according to law* and that I will render a just account of my administration when I shall be thereto lawfully required."

The bond is a joint bond by the administrator and the two sureties in the sum of $300,000 to be paid to the Colonial Treasurer. The condition of the bond is that the obligation shall be void if the administrator "do well and truly administer according to law the movable and immovable property of the deceased."

What "administering" means is quite clear from the administrator's oath set out above, and it is quite inconceivable that the word has one meaning in the administrator's oath and another in the sureties' bond which is intended to implement it.

Reference may also be made to section 30 of the Probate and Administration Ordinance, 1934 which reads as follows:—

"The Court or a Judge may, if it appears that the condition of an administration bond has been broken, order that it be assigned by the Registrar to some named person, who shall thereupon be entitled to sue on the bond under his own name on *behalf of all persons interested in the estate* in respect of which the bond was executed, as though it had originally been made in his favour."

It will be seen that the bond may be enforced on behalf of "all persons interested." Can it be suggested that beneficiaries are not interested?

This interpretation of the bond is supported by the practice of requiring the bond originally to be in a sum equal to the value of the estate without deduction of the debts. In England it is the practice to require a bond in a sum double the value of the estate. This negatives the suggestion that the bond is only intended to secure the debts and the estate duty.

Apart from the inference which would appear to follow necessarily from the forms and the statutory provisions, I was referred to two authorities which exactly cover the point. In *Dobbs* v. *Brain,* [1892] 2 Q.B., p. 207 sureties were held liable for a legacy of £50 due to an infant which the administrator had paid to the infant's father and guardian who subsequently disappeared. In *Debendra Nath Dutt* v. *Administrator-General of Bengal,* 99 L.T. p. 68, a Privy Council case, letters of administration had been obtained by fraud and the letters of administration were subsequently cancelled. In the meantime the administrator had misappropriated the assets. The sureties were held liable for the acts of the administrator in an action brought by the Administrator-General to whom the bond had been assigned, and were ordered to repay the whole of the amount misappropriated with interest. It was never suggested that the sureties' liability was limited to the estate duty and debts, if any.

There can be no question therefore that if the first defendant has not paid over the assets of the estate to a person who was able to give him a discharge, the sureties will *prima facie* be liable in an action brought by the infant beneficiary when he comes of age.

As regards the general duties of an administrator who has obtained a grant as the attorney of someone outside the jurisdiction, the law is plain enough. As regards third parties, he is as fully an administrator as if he had obtained a grant in his own right. When, however, he is acting under the authority of an administrator who has obtained a grant in the place of the deceased's domicile he will obtain a good discharge if he hands over the net assets to the principal administrator before he is sued, *Eames* v. *Hacon,* 18 Ch. D. p. 347. Where, however, the attorney's principal is not an administrator in any country, but merely a person such as a widow, who might be entitled to apply for letters of administration, the administrator will not obtain a discharge by handing over the assets to such person. *In re Rendal, Wood* v. *Rendall,* [1901] 1 Ch. p. 230. Again where an administrator in England is appointed independently of an administrator appointed elsewhere, the English administrator will not obtain a discharge by paying over the assets to the other administrator even if such administrator is administrator in the place of the deceased's domicile. The Court will exercise a discretion as to whether such assets should be paid over or not. *Lorillard, Griffiths* v. Catforth, [1922] 2 Ch. p. 638.

It would appear, however, that *prima facie* an administrator is responsible to the beneficiaries, but can obtain a discharge by handing over the estate to a principal administrator on whose behalf the letters of administration were obtained, provided that he has no notice of any claims by creditors or beneficiaries. In all other cases if he does not hand over the assets to the beneficiaries, his only protection is to act in pursuance of an order of Court.

It was argued, however, that this was no longer the law in view of the decision in *In re Achillopoulos,* [1928] Ch. p. 433. In that case the deceased was domiciled in Greece but left considerable assets in England. Administration was obtained in England by an attorney on behalf of one of the testator's daughters, the testator's wife and his three daughters being named as the testator's 'heirs' in his will. The wife predeceased him. The administrator applied to the Court for directions as to whether he should hand over the assets to the daughter [36] whose attorney [36] he was, or alternatively to the three daughters as the heirs of the testator. Subsequently joint administrators were appointed by virtue of a power of attorney given by all three daughters, and these administrators were plaintiffs on the summons, the daughters being defendants. Expert evidence was called and it was proved to the satisfaction of the Court that by the law of Greece the three daughters as heirs were charged with the duties which under our law devolve upon an executor. In these circumstances the Court made an order giving the English administrators authority to hand over the assets to the defendants. In this case also it is clear that the Court exercised a discretion, since at p. 445 of the report Tomlin J. says: "That being so, I am free, if I see fit, to give the administrators over here liberty to hand over any surplus to these defendants."

I think therefore that this case, as also the case of *In re Lorillard,* shows that an order of Court is necessary for the protection of the administrator, since if the order for payment is a matter of discretion, the discretion might be exercised the other way, and it would not be safe for an administrator to make the payment first and rely on obtaining the approval of the Court *ex post facto.*

Now, Mr. Braddell argues that Seethai Achi is in the position of administratrix, although under the law of the deceased's domicile no representation is ever taken out in respect of Hindu joint family property. It may be that this is so, but the first defendant never received any authority from this Court to make the payment in question and he does not ask for any authorisation now. What he asks for is a declaration that he was at liberty to make such payment without any authorisation from the Court, and in view of the authorities quoted above, I think that answer must be in the negative. In view of this finding I do not think that it is necessary to deal with all the issues in detail.

This does not, however, conclude the matter. It is admitted that the only person interested in the estate subject to the second defendant's right of maintenance, is the third defendant who is still an infant. The third defendant is represented by his guardian *ad litem* and, through his solicitors joined in framing the issues now before the Court, but no issue is raised as regards any maladministration on the part of the first defendant. There are no creditors and the estate duty, apart from a further claim with which this application is not concerned, has been paid. The only danger therefore to the sureties is that the third defendant may object to the handing over of the assets to the second defendant without the authority of an order of Court. But during the course of the hearing before me, the third defendant's counsel expressly disclaimed on behalf of his client any objection to this procedure having been adopted. In view of this and of the limited scope of the issues which by inferences exclude all other issues, I think that the third defendant is precluded from making any claim whatever against the sureties.

As a result, therefore, the plaintiff does not require the protection of an administration order, and no order need be made on the originating summons.

Order accordingly.

Solicitors: *Allen & Gledhill; Mendis & Ahlip; Braddell Bross; Sisson & Delay; Chan & Eber.*

REX v. MOONA MOHAMED HUSSAIN MARICAR

[A. Cr. J. (Terrell J.) October 8, 1935]

[Singapore Magistrate's Appeal No. 32 of 1935]

Criminal Procedure Code, s.295(5) — Grounds of Appeal.

In criminal appeals the rules laid down and particularly the provisions of the Ordinance with regard to the time within which grounds of appeal must be given must be adhered to and only in exceptional cases are these rules to be relaxed.

MAGISTRATE'S APPEAL.

Roland Braddell and *Battishill* for the appellant.

Clark (Solicitor-General) for the Crown.

The facts and arguments are sufficiently set out in the judgment.

Cur. Ad. Vult.

Terrell J.: This was a motion that the petition of appeal dated the 25th July, 1935 might be amended by substituting some 22 new grounds of appeal for the grounds of appeal mentioned in the original petition.

The history of the case is as follows: The accused was arrested on the 24th September, 1934 and after various remands, was charged on the 19th November, 1934 when he claimed trial. The trial was commenced on the 10th January, 1935 and continued at intervals until the 6th July, 1935 when the accused was convicted. There were in all 32 hearings. On the day that he was convicted the accused gave notice of appeal in accordance with section 295(1) of the Criminal Procedure Code. The notice, as required by section 295(2), gave Messrs. Sisson & Delay as the appellant's address for service.

Having received the notice of appeal it was the duty of the learned District Judge to make a signed copy of his grounds of decision. This was duly prepared and served upon Messrs. Sisson & Delay on the 18th July, 1935, and under section 295(4) it was the duty of the appellant to lodge three copies of his petition of appeal [37] within 10 days after service upon his of the grounds of decision. The last day for lodging the petition of appeal was accordingly the 27th July, 1935. [37]

On the 25th July Messrs. Drew & Napier lodged a petition of appeal. The grounds of appeal alleged in this petition were as follows:—

(a) the learned District Judge and First Magistrate was wrong in law, and

(b) that the conviction was against the weight of evidence.

This petition clearly did not comply with the provisions of section 295(5) of the Criminal Procedure Code which requires that the petition —

"shall contain such definite particulars of the points of law or fact in regard to which the Court appealed from is alleged to have erred."

It appears from the affidavits, and is not contradicted, that both the prosecution and Messrs. Sisson & Delay, the legal advisers of the appellant, received a copy of the record as the trial progressed. It is, however, stated in the appellant's affidavit that his new solicitors, Messrs. Drew & Napier, did not receive a copy of the record or of the grounds of decision until the 12th August, 1935. It must be presumed therefore that Messrs. Drew & Napier omitted for over three weeks to avail themselves of the material in the previous solicitors' hands.

On the 15th August the appellant desired to brief Mr. Roland Braddell who insisted upon being instructed by the appellant's solicitors. Thereupon it would appear that the appellant left Messrs. Drew & Napier and returned to Messrs. Sisson & Delay.

Nothing further happened until the 21st September, 1935 when this motion and the affidavit in support were filed.

The Acting Solicitor-General on behalf of the Crown submitted that the petition of appeal filed on the 25th July not having complied with the provisions of section 295(5) was a nullity, and the application must be treated as a petition for leave to appeal out of time. I do not think that this argument is sound. It is true that if the petition of July 25th had come before the Court in its present form the appeal would have failed, as no argument would have been allowed thereon, but I find it impossible to say that it was not a petition, and I treat this application as what it professes to be, namely an application to amend a petition of appeal.

Various authorities were cited from the Court of Criminal Appeal records, both here and in England, but in my opinion, although such authorities are useful as indicating the principle by way of analogy, the present application must be decided by reference to the special provisions of the Criminal Procedure Code